

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

May 20, 2019

In the Matter of

Algonquin Gas Transmission LLC

OADR Docket Nos. 2019-008, 2019-009,
2019-010, 2019-011, 2019-012 and 2019-
013
Air Quality Plan Approval
Weymouth, MA

ORDER TO SHOW CAUSE

These consolidated appeals challenge an Air Quality Plan Approval (“Air Permit”) that the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to Algonquin Gas Transmission LLC (“the Applicant”) on January 11, 2019 for construction and operation of a natural gas compressor station in the Town of Weymouth. I conducted a three-day evidentiary adjudicatory hearing (“Hearing”) on the appeals on May 15-May 17, 2019 in the Department’s Boston office. The Hearing has not concluded for the reasons discussed below.

At 9:00 AM on Friday, May 17, 2019, at the beginning of the third day of the Hearing, I was informed by Attorney Michael Hayden, who represents the Ten Residents Group in Docket No. 2019-008 challenging the Air Permit, that the Department had sent an email message to the parties in these appeals after the close of business on the previous date, Thursday, May 16, 2019,

and after the Hearing had concluded for that day. The email message apparently contained a link to the Department's website at which could be found additional data received by the Department relating to air monitoring at and/or near the site of the proposed compressor station at issue in these appeals. It is my understanding that the link contains 759 pages of data. Those data are potentially relevant to these appeals. According to representations made to me by the Department's attorney at the Hearing on May 17, 2019, the Department received the data from a laboratory on Monday, May 13, 2019, two days prior to the start of the Hearing on Wednesday, May 15, 2019. The Department's delay in disclosing the data to the other parties to the appeal until after the close of business on May 16, 2019, is unacceptable and may warrant the imposition of sanctions against the Department pursuant to 310 CMR 1.01.

The Department is ordered to show cause why I should not impose sanctions against the Department for delaying disclosure of the data to the Petitioners until after the close of business on May 16, 2019. In its response to this order, the Department shall provide, by affidavit signed under the pains and penalties of perjury by the Department staff member having the most personal knowledge regarding the data at issue and the circumstances of the delay, a detailed explanation for its delay in disclosing the data, including but not limited to responses to the following questions and requests:

1. When did the Department first receive the data?
2. Identify all persons employed by the Department who received the data directly from the laboratory, and further identify all persons within the Department who were informed that the data had been received, including the date and time each of the referenced persons were so informed.

3. Why did the Department not disclose the existence of the data to the parties to these appeals until four days after the data were received, and two full days after the commencement of the Hearing?

4. Did the Department disclose the existence of the data to the Applicant prior to the time it made disclosures to the other parties? If so, describe when this disclosure was made, to whom it was made, how it was made, and describe the substance of the disclosure.

In addition to the information provided by affidavit to the questions and requests stated above, the Department shall provide any and all correspondence created by and received by the Department from Monday, May 13, 2019 through Friday, May 17, 2019 related in any way to the newly disclosed data, including but not limited to email messages between and among Department personnel, and between and among Department personnel and any third parties, which shall include but not be limited to personnel in other government agencies, parties to these appeals, and any laboratory.

The Department's response to this order shall be filed with Doreen Kearney, Interim Case Administrator, no later than 5:00 PM on Wednesday, May 22, 2019, with copies to the service list.

Date: 5/20/2019



Jane A Rothchild
Presiding Officer

SERVICE LIST

IN THE MATTER OF:

ALGONQUIN GAS TRANSMISSION, LLC

Docket Nos. 2019-008, 009, 010, 011, 012, 013

Weymouth

REPRESENTATIVE

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Citizens Group

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